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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,521	10/01/2003	Vincent LaBonia JR.	PLC 10400	8312

25306 7590 11/17/2005

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EXAMINER

GABLER, PHILIP FRANCIS

ART UNIT PAPER NUMBER

3637

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/676,521	LABONIA ET AL.	
	Examiner	Art Unit	
	Philip Gabler	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/01/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57, 58, 60, 65 and 66 is/are rejected.
- 7) ☒ Claim(s) 59, 61-64 and 67-76 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 60, and 65-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 60 recites the limitation "the first predetermined degree of angulation" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. There is no mention of a first predetermined degree of angulation in claim 60 or in claim 57, upon which claim 60 is dependent.

5. Regarding claim 65, the phrase "rear lengthwise end" renders the claim indefinite because it is unclear which rear lengthwise end is being modified. Both side panels, as

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well as the at least one shelf member are said to include a rear lengthwise end in claim 57, upon which claim 65 is dependent.

6. Claim 66 is rejected because it is dependent upon an indefinite claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

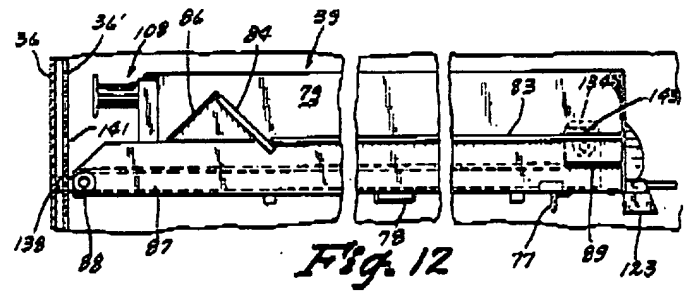
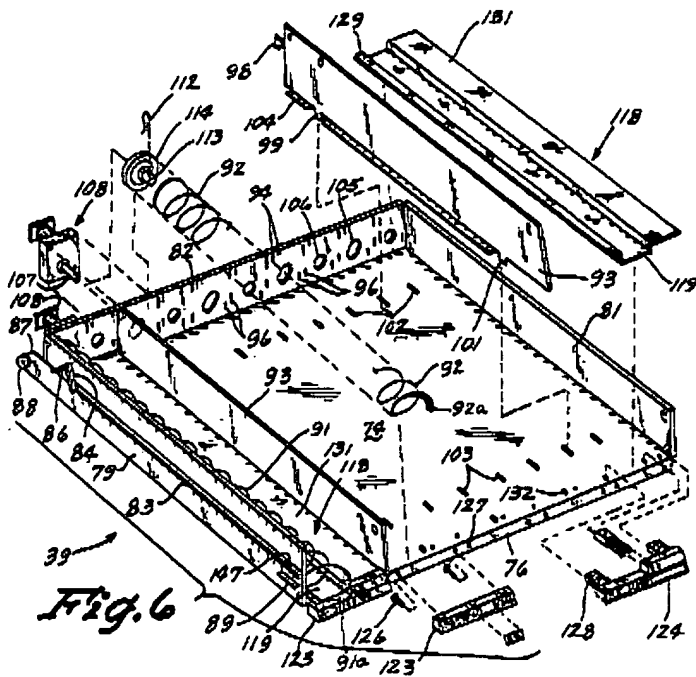
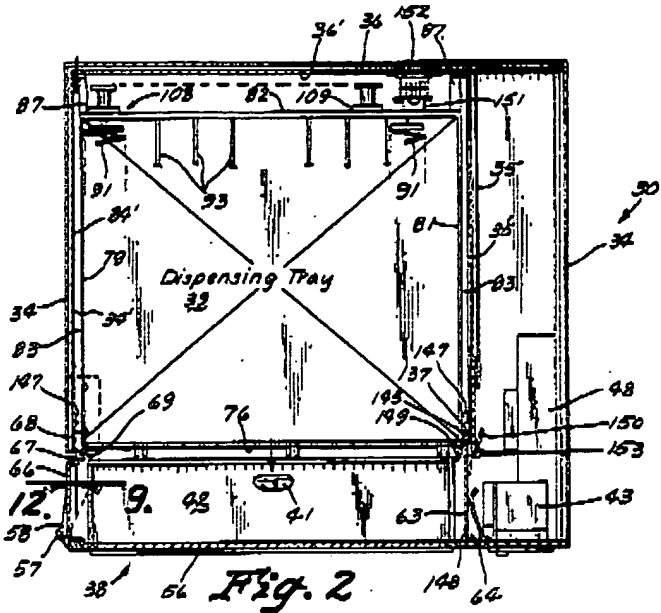
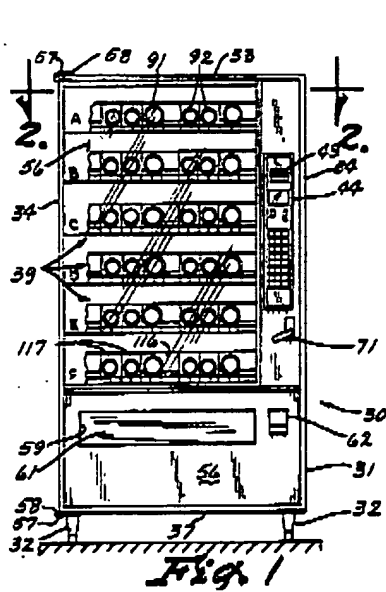
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 57 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Albright et al. (US Patent Number 4757915). Albright (Figures 1, 2, 6, and 12) discloses a storage device comprising: a pair of opposing side panels (34') and (35'), each side panel having a front lengthwise end, a rear lengthwise end, an upper widthwise end, and a lower widthwise end; a top panel (33) attached to the upper widthwise ends of the opposing side panels; a bottom panel (37) attached to the lower widthwise ends of the opposing side panels; a back panel (36') attached to the rear lengthwise ends of the opposing side panels so as to define a housing having an interior; and at least one shelf member (39) positioned within the interior of the housing and attached to the opposing side panels, the at least one shelf member comprising a shelf panel (39) that has a

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predetermined length, a generally planar top side (74) capable of storing parts thereon, a bottom side (opposite 74), a front lengthwise end section (76 and surrounding area) that is proximate to the front of the storage bin and which extends for the entire predetermined length of the shelf panel, and a rear lengthwise end section (82) that is adjacent to the back panel, the front lengthwise end section comprising an inclined section (123) that has a length that is substantially equal to the predetermined length of the shelf panel, the inclined section being angulated with respect to the generally planar top side of the shelf panel such that the angle measured between the inclined section and the generally planar top side is greater than 90° , the front lengthwise end section further comprising a front wall section (77) that is attached to and extends for substantially the entire length of the inclined section, the front wall section being angulated with respect to the inclined section in accordance with a second predetermined degree of angulation such that the front wall section is positioned across from the inclined section and substantially parallel to the back panel. As to the last paragraph, it has been held that the function "whereby" statement does not define any structure and accordingly cannot serve to distinguish. Regarding claim 58, Albright further discloses a plurality of shelf members wherein all of the front wall sections are substantially coplanar.



Albright et al. '915 Figures 1, 2, 6, and 12

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9. Claims 57 and 58 are rejected under 35 U.S.C. 102(e) as being anticipated by Bienick (US Patent Number 6422673). Bienick discloses a storage device comprising: a pair of opposing side panels (viewed as A in Exhibit 2), each side panel having a front lengthwise end, a rear lengthwise end, an upper widthwise end, and a lower widthwise end; a top panel (B) attached to the upper widthwise ends of the opposing side panels; an inherent bottom panel (not shown) attached to the lower widthwise ends of the opposing side panels (as is conventionally known in the art, i.e. the compartment of Bienick would be bounded by at least a top, a bottom, a back, and two side panels); a back panel (C) attached to the rear lengthwise ends of the opposing side panels so as to define a housing having an interior; and at least one shelf member (30) positioned within the interior of the housing and attached to the opposing side panels, the at least one shelf member comprising a shelf panel (30) that has a predetermined length, a generally planar top side (35) capable of storing parts thereon, a bottom side (opposite 35), a front lengthwise end section (viewed as FS in Exhibit 1) that is proximate to the front of the storage bin and which extends for the entire predetermined length of the shelf panel, and a rear lengthwise end section (D) that is adjacent to the back panel, the front lengthwise end section comprising an inclined section (FH) that has a length that is substantially equal to the predetermined length of the shelf panel, the inclined section being angulated with respect to the generally planar top side of the shelf panel such that the angle measured between the inclined section and the generally planar top side is greater than 90° (it is in fact greater than 180° when measured from the horizontal axis), the front lengthwise end section further comprising a front wall section (73) that is

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attached to and extends for substantially the entire length of the inclined section, the front wall section being angulated with respect to the inclined section in accordance with a second predetermined degree of angulation such that the front wall section is positioned across from the inclined section (note Figure 3) and substantially parallel to the back panel. As to the last paragraph, it has been held that the function "whereby" statement does not define any structure and accordingly cannot serve to distinguish. As an aside, Bienick's shelf would allow a user to easily slide parts off of the top side of the shelf panel as readily apparent to the examiner. Regarding claim 58, Bienick further discloses a plurality of shelf members wherein all of the front wall sections are substantially coplanar.

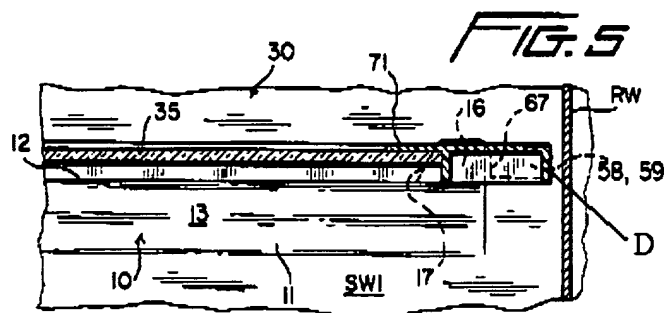
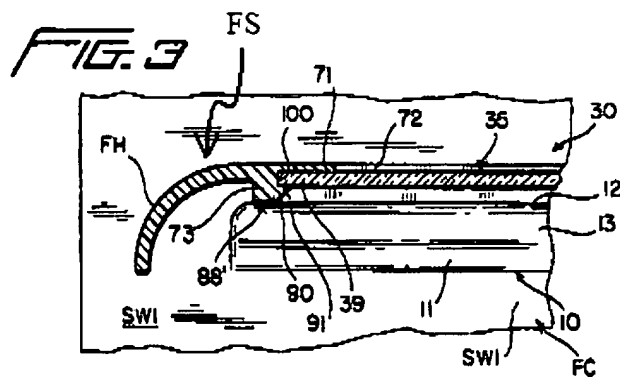


Exhibit 1: Bienick '673 Figures 3 and 5

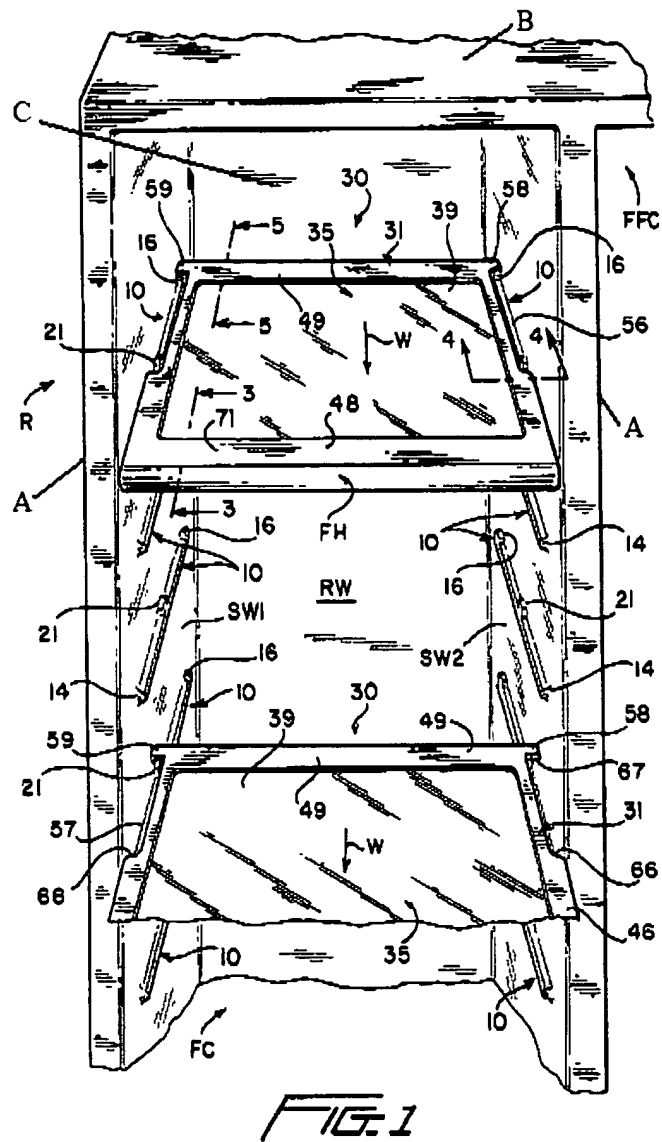


Exhibit 1: Bienick '673 Figure 1

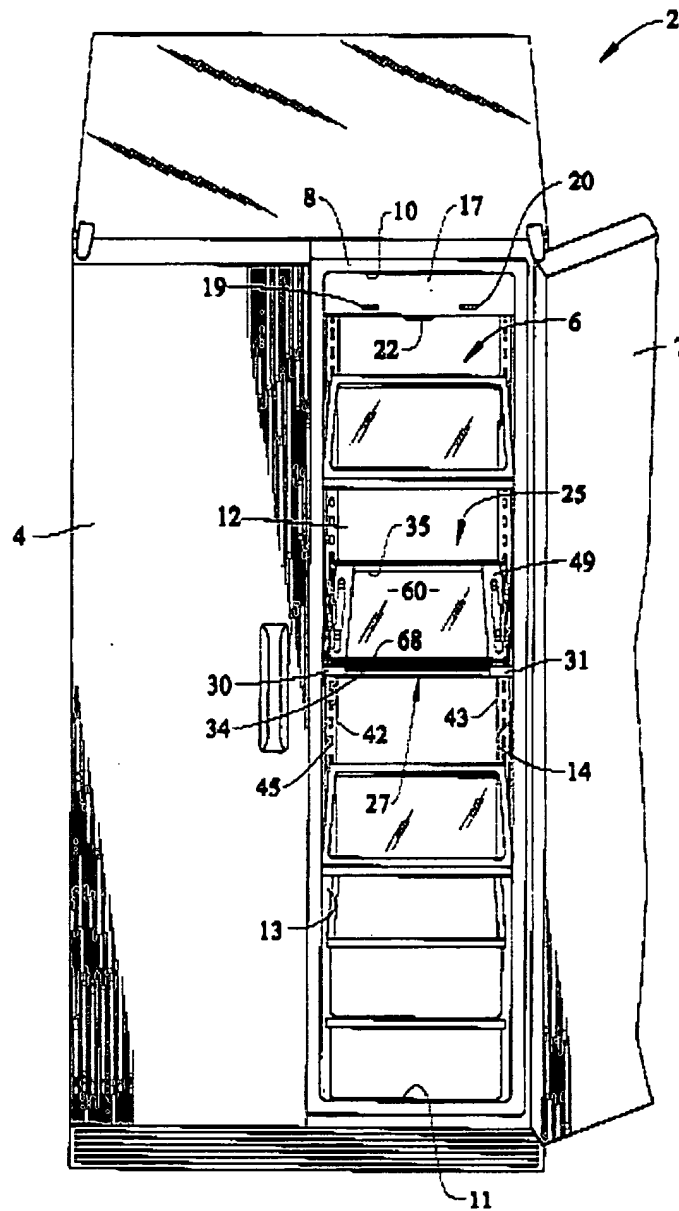
Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bienick in view of Lye et al. (US Patent Number 6227636). Bienick discloses a storage device comprising: a pair of opposing side panels (viewed as A in Exhibit 1), each side panel having a front lengthwise end, a rear lengthwise end, an upper widthwise end, and a lower widthwise end; a top panel (B) attached to the upper widthwise ends of the opposing side panels; a back panel (C) attached to the rear lengthwise ends of the opposing side panels; and at least one shelf member (30) positioned within the interior of the housing and attached to the opposing side panels, the at least one shelf member comprising a shelf panel (30) that has a predetermined length, a generally planar top side (35) capable of storing parts thereon, a bottom side (opposite 35), a front lengthwise end section (viewed as FS in Exhibit 1) that is proximate to the front of the storage bin and which extends for the entire predetermined length of the shelf panel, and a rear lengthwise end section (viewed as D in Exhibit 1) that is adjacent to the back panel, the front lengthwise end section comprising an inclined section (FH) that has a length that is substantially equal to the predetermined length of the shelf panel, the inclined section being angulated with respect to the generally planar top side of the shelf panel such that the angle measured between the

inclined section and the generally planar top side is greater than 90° (it is in fact greater than 180° when measured from the horizontal axis), the front lengthwise end section further comprising a front wall section (73) that is attached to and extends for substantially the entire length of the inclined section, the front wall section being angulated with respect to the inclined section in accordance with a second predetermined degree of angulation such that the front wall section is positioned across from the inclined section (note Figure 3) and substantially parallel to the back panel. As to the last paragraph, it has been held that the function “whereby” statement does not define any structure and accordingly cannot serve to distinguish. As an aside, Bienick’s shelf would allow a user to easily slide parts off of the top side of the shelf panel as readily apparent to the examiner. While the bottom panel was viewed as being an inherent feature in the previous 102(e) rejection, the examiner further demonstrates this assertion by incorporating the evidence of the Lye reference. Lye (Figure 1) discloses a storage device comprising a housing including a bottom panel (11) attached to the lower ends of opposing side panels (13) and (14). As such, it would have been obvious to one of ordinary skill in the art to modify the storage device of Bienick to include a bottom panel because this arrangement would complete the housing of Bienick’s device, making the enclosure complete and functional as a refrigerator as described. Regarding claim 58, Bienick further discloses a plurality of shelf members wherein all of the front wall sections are substantially coplanar.



Lye et al. '636 Figure 1

Allowable Subject Matter

12. Claims 59, 61-64, and 67-76 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 60, and 65-66 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Mitchell reference (US Patent Number 2926978) is cited for disclosing a storage device with multiple shelves holding a plurality of drawers. The Pacetti reference (US Patent Number 5664856) is cited for disclosing a storage device with multiple drawers and dividers. The Joyce reference (US Patent Number 3581906) and the Hall reference (US Patent Number 2211113) are cited for disclosing shelving structures with shapes similar to those in the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFG
11/8/2005

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

A handwritten signature in black ink, appearing to read "Lanna Mai", with a long horizontal flourish extending to the right.